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16530
RECORDATION NO. _____ FILED 1425

SEP 20 1989 -3 55 PM

September 20, 1989 INTERSTATE COMMERCE COMMISSION

The Honorable Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

9-263A026

Dear Secretary McGee:

Enclosed for recordation, under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder, are an original and three counterparts of a Locomotive Sublease Agreement, dated as of September 1, 1989, between The Atchison, Topeka and Santa Fe Railway Company ("Sublessor") and General Electric Company ("Sublessee"), a primary document.

Please cross-index this filing with existing Recordation Nos. 9017, 10224, 12287 and 13067.

The names and addresses of the parties to the enclosed Locomotive Sublease Agreement are as follows:

SUBLESSOR: The Atchison, Topeka and Santa Fe
Railway Company
80 East Jackson Boulevard
Chicago, IL 60604

SUBLESSEE: General Electric Company
2901 East Lake Road
Erie, PA 16531

A general description of the railroad locomotives covered by the enclosed document is attached hereto as Schedule I.

Letter to Secretary McGee

Page 2

September 20, 1989

The undersigned is the attorney-in-fact of General Electric Company. Please return the original of the enclosed document to John K. Maser III, Esquire, Donelan, Cleary, Wood & Maser, P.C., Suite 850, 1275 K Street, N.W., Washington, D.C. 20005-4006 or to the bearer hereto.

Also enclosed is a remittance in the amount of \$13.00 for the required recording fee.

A short summary of the document to appear in the index follows:

PRIMARY DOCUMENT

Locomotive Sublease Agreement, dated as of September 1, 1989, between The Atchison, Topeka and Santa Fe Railway Company ("Sublessor") and General Electric Company ("Sublessee"), relating to: (a) sixteen (16) General Electric B36-7, 3600 horsepower, four axle, four motor, Road Freight Diesel Electric Locomotives, bearing identification marks "Santa Fe" and Road Nos. 7484 through and including 7499; and (b) fifty-four (54) General Electric C30-7, 3000 horsepower, six axle, six motor, Road Freight Diesel Electric Locomotives, bearing identification marks "Santa Fe" and Road Nos. 8015, 8017, 8021, 8023, 8025, 8026, 8032, 8035, 8044, 8046, 8050, 8053, 8056, 8058, 8066, 8072, 8075, 8077, 8078, 8079, 8084, 8087, 8093, 8095, 8096, 8123 through and including 8149, 8151 and 8152.

Respectfully submitted,

GENERAL ELECTRIC COMPANY

BY:



John K. Maser III
Attorney-In-Fact

Enclosures

Schedule 1

Description of Locomotives

<u>Type of Equipment</u>	<u>Number</u>	<u>AAR Mechanical Designation</u>	<u>Identifying Marks</u>	<u>Road Numbers</u>
General Electric B36-7, 3600 horsepower, four axle, four motor Road Freight Diesel Electric Locomotives	16 locomotives	B-B	Marked "Santa Fe" in yellow	7484 through and including 7499
General Electric C30-7, 3000 horsepower, six axle, six motor, Road Freight Diesel Electric Locomotives	54 locomotives	C-C	Marked "Santa Fe" in yellow	8015, 8017, 8021, 8023, 8025, 8026, 8032, 8035, 8044, 8046, 8050, 8053, 8056, 8058, 8066, 8072, 8075, 8077, 8078, 8079, 8084, 8087, 8093, 8095, 8096, 8123 through and including 8149, 8151 and 8152

Interstate Commerce Commission
Washington, D.C. 20423

9/20/89

OFFICE OF THE SECRETARY

John K. Maser III
Donelan, Cleary, Wood & Maser, P.C.
1275 K. St. N.W. Suite 850
Washington, D.C. 20005-4006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/20/89 at 3:55pm and assigned recordation number(s). 16530

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

LOCOMOTIVE SUBLEASE AGREEMENT

16530
RECORDATION NO. FILED 1623
SEP 20 1989 - 3 52 PM
INTERSTATE COMMERCE COMMISSION

This Sublease is made as of the 1st day of September, 1989, between The Atchison, Topeka and Santa Fe Railway Company, a corporation of the State of Delaware (hereinafter "Sublessor") and General Electric Company, a corporation of the State of New York (hereinafter referred to as the "Sublessee").

WHEREAS, Sublessor desires to sublease to Sublessee certain locomotives described in Appendix 1 (hereinafter referred to as "Locomotives").

WHEREAS, the Locomotives are subject to the financing arrangements described in Appendix 1 under which Harris Trust and Savings Bank acts as trustee ("Trustee") under the Equipment Trust Agreements listed in said Schedule.

WHEREAS, this Sublease of Locomotives is at all times to be subordinate to such financing agreements and the rights of the Trustee.

NOW THEREFORE, for and in consideration of the initial covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, Sublessor and Sublessee agree as follows:

1.0 Equipment

Sublessor agrees to furnish and lease to Sublessee, and Sublessee agrees to accept and use under the terms and conditions set forth herein, the locomotives described in Appendix 1 hereto.

2.0 Delivery

2.1 Delivery of the Locomotives and the provision of transportation services in connection with the shipment of the Locomotives beyond said point of delivery shall be as provided in Part I of Appendix 3 and as set forth in the schedules in Appendix 1 hereto.

2.2 The Sublessor shall not be liable for delays in delivery or failure to deliver the Locomotives due to (a) causes beyond its reasonable control, or (b) acts of God, acts of the Sublessee, acts of civil or military authority, governmental priorities, fires, strikes, floods, epidemics, war, riots, or delays in transportation. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

3.0 Receipt, Inspection and Acceptance

- 3.1 At the time the Locomotives are delivered, an authorized representative of Sublessee shall execute a Certificate of Acceptance in the form attached as Appendix 2 hereto.
- 3.2 The Locomotives will be subject to Sublessee's inspection upon delivery. Failure to report any material defect in the Locomotives discoverable upon visual examination and physical inspection at the time of delivery will constitute acceptance of the Locomotives and be conclusive evidence of fitness for service at the time of delivery or compliance with the terms of paragraph 5.3 of this Sublease.
- 3.3 The Locomotives will be available at all reasonable times for Sublessor's inspection and for inspection by the Trustee under any primary financing arrangement, as described in Appendix 1, but neither Sublessor nor Trustee is under any obligation to inspect such Locomotives and Sublessee's obligation to keep the Locomotives in good repair and operating condition will not be affected in any manner by any failure to inspect.

4.0 Rentals

4.1 Sublessee agrees to pay to Sublessor, as rent for each of the Locomotives, the sum of per day after delivery and acceptance so long as this Sublease shall apply to each such Locomotive, paid in arrears on an actual day basis by and due no later than the first day of the following month (the "Payment Date").

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4.2 Payments of rental charges not received within five (5) days of the Payment Date will accrue interest as provided in paragraph 4.3. All other payments due under this Sublease will be made within thirty days of invoicing. Payments, unless otherwise agreed, shall be by wire transfer to such bank in the continental United States as Sublessor shall designate.

4.3 Anything to the contrary notwithstanding, it is agreed that if Rental Charges remain unpaid 5 days after the Payment Date or any other amounts remain unpaid after the same shall have become due and payable pursuant to the terms of this Sublease, the Sublessee shall pay interest at the then current prime rate of interest charged by Citibank N.A. plus

2-1/2 percent (or the lawful rate, whichever is less) on overdue rental from the Payment Date and on other overdue amounts for the period of time during which they are overdue; it being expressly understood that this provision shall be in addition to (and not in derogation of) any other rights which Sublessor may have under this Sublease in the event Sublessee fails to make all payments when due and payable.

5.0 Alterations, Maintenance and Repair

5.1 Except for alterations or changes required by law or regulatory authorities and initial engine repairs Sublessee intends to perform on the sixteen locomotives shown on Schedule 1 of Appendix 1, or as otherwise expressly permitted by Sublessor hereunder, the Sublessee shall not effect any change in the design, construction or specifications of the Locomotives, body or electrical equipment, or components thereof, without the prior authority and approval of the Sublessor which approval shall not be unreasonably withheld. Any such alteration or change if made shall be at Sublessee's expense except as provided in Section 6.1. Any parts installed or replacements made by Sublessee upon any

Locomotive shall be considered accessions to such Locomotive and title thereto shall be immediately vested in the Trustee or Sublessor, as governed by the applicable primary financing agreement, without cost or expense to Sublessor.

- 5.2 Sublessee shall, during the term of this Sublease, at its sole expense keep the Locomotives in good repair and operating condition (reasonable wear and tear excepted), applying the manufacturer's recommended normal maintenance standards and procedures.
- 5.3 ABSENCE OF WARRANTIES BY SUBLESSOR. THE LOCOMOTIVES SUBLEASED UNDER THIS AGREEMENT ARE TO BE ACCEPTED BY SUBLESSEE IN AS IS CONDITION WITH NO WARRANTIES OR REPRESENTATIONS WHATSOEVER BY SUBLESSOR AS TO THEIR FREEDOM FROM DEFECTS IN MATERIAL, WORKMANSHIP OR MAINTENANCE, OR THEIR MERCHANTABILITY, CONDITION OR FITNESS FOR ANY PARTICULAR PURPOSE EXCEPT THAT SUBLESSOR SHALL FURNISH THE 16 LOCOMOTIVES SHOWN IN SCHEDULE 1 OF APPENDIX 1 IN OPERATING CONDITION EXCEPT FOR NECESSARY ENGINE REPAIRS WITH ALL COMPONENTS IN REPAIRABLE CONDITION, AND THAT THE REMAINING 54 LOCOMOTIVES SHALL BE IN GOOD REPAIR AND

OPERATING CONDITION, NORMAL WEAR AND TEAR EXCEPTED,
AND SUITABLE FOR INTERCHANGE UNDER FRA REQUIREMENTS.

6.0 Use and Operation

- 6.1 The Sublessee agrees to comply in all respects with all laws of the jurisdictions in which its operations involving the Locomotives may extend and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives, to the extent that such laws and rules affect the operation or use of the Locomotives. In the event such laws or rules require an alteration of Locomotives, the Sublessee will conform therewith, at its expense if the cost of the alteration is up to \$10,000 per Locomotive during the first three years of the term of this Sublease, or \$5,000 per Locomotive thereafter, or, if the cost of the alteration is greater than such amounts, at its expense if it so elects. Provided, however, if the cost of alteration is:
- (i) greater than \$10,000 per Locomotive during the first three years of the term of the Sublease as to such Locomotive, or

(ii) greater than \$5,000 per Locomotive during the last two years of the term of the Sulease as to such Locomotive, or

(iii) the aggregate cost of required alterations made to an individual Locomotive with the addition of that alteration would exceed \$10,000,

and Sublessee elects not to perform such alteration at its expense and Sublessor also elects not to bear the expense of alteration, Sublessee shall have the option to terminate this Sublease with respect to the particular Locomotive or Locomotives requiring alteration if such laws or rules substantially affect the operation or use of the Locomotives in general service. In the event of such termination, Sublessee shall return the unit(s) to Sublessor and neither Sublessor nor Sublessee shall have any further obligation to the other with respect to such particular Locomotive other than those already arising prior to termination. After alteration, Sublessor will maintain the same in proper condition for operation under such laws and rules, provided, however, that the Sublessee may, in good faith, contest the validity and application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Sublessor, adversely affect the property or rights of the Sublessor or

Trustee as owner hereunder or the financing arrangements, respectively.

- 6.2 Sublessee will use and operate the Locomotives in conformance with all applicable manufacturer recommendations.
- 6.3 Sublessee will maintain records as to the use, operation, movement and maintenance of the Locomotives, and such records will be available for Sublessor's inspection at reasonable times and upon reasonable notice.
- 6.4 Sublessee agrees to use the Locomotives within the boundaries of the United States, except as specifically agreed to in writing by Sublessor, if permitted under primary financing agreements, which consent will not be unreasonably withheld.
- 6.5 After acceptance, charges levied by any parties for use of their rights of way, track, storage or hauling are the responsibility of the Sublessee.
- 6.6 Sublessor agrees to provide certain storage and transportation services to Sublessee for the Locomotives during the term of this Sublease after

initial delivery to the extent and as provided in Appendix 3. The parties agree that the rates and charges stated therein for the transportation and storage of Locomotives shall be incorporated into a Railroad Transportation Contract under 49 U.S.C. §10713 and copies of such contract shall be filed with the Interstate Commerce Commission and any appropriate state agencies pursuant to applicable federal and state regulation.

7.0 Taxes and Liens

7.1 The Sublessee agrees that, during the continuance of this Sublease, it will promptly pay, as additional rentals, all property taxes, sales and use taxes, and assessments and other governmental charges in the nature of such taxes levied or assessed against the Sublessor, or any predecessor or successor in title of the Sublessor, as the case may be, on account of its ownership of the Locomotives, or on account of the use or operation thereof, or on account of the earnings arising therefrom (exclusive, however, of any tax in the nature of an income tax on the rentals herein provided), including any sales or similar taxes payable on account of the leasing of the Locomotives hereunder;

but the Sublessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof, unless thereby, in the reasonable judgment of the Sublessor, the rights or interests of the Sublessor will be materially endangered. In the event any tax reports are required to be made concerning said Locomotives, the Sublessee will either make such reports itself if permitted in such manner as to show the ownership of such Locomotives by the Sublessor or Trustee or will notify the Sublessor of such requirement and will provide such information as necessary to make such report in such manner as shall be reasonably satisfactory to the Sublessor or Trustee.

- 7.2 The Sublessee will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim against the Sublessee which, if unpaid, might become a lien or charge upon or against the title of the Sublessor to the Locomotives or which might have the effect of altering in any way the rights of the Sublessor or Trustee in such Locomotives under this Sublease; but

the Sublessee shall not be required to pay or discharge any such debt, tax, charge, assessment, or obligation or claim so long as the validity or amount thereof shall be contested in good faith and by appropriate legal or administrative proceedings, unless such contest will, in the reasonable judgment of the Sublessor, materially endanger the rights or interests of the Sublessor or Trustee.

8.0 Loss and Damage

- 8.1 Sublessee shall bear the entire risk of loss (including theft) or damage to any Locomotive from the date of delivery through termination of the Sublease with respect to that Locomotive in accordance with the provisions of Section 15.0 below, regardless of the cause of such loss or damage, except to the extent such loss or damage is caused directly by the negligence or wilful misconduct of Sublessor or its employees.
- 8.2 Sublessee shall notify Sublessor promptly of any accident, collision, loss, theft or damage involving any Locomotive, to be followed promptly by a detailed written report to Sublessor. Sublessee shall provide all assistance reasonably requested by

Sublessor in the investigation, defense or prosecution of any resulting claims or suits.

8.3 In the event a Locomotive is lost or damaged beyond repair, Sublessee shall so notify Sublessor within 15 days. Within thirty days of such notification, Sublessee shall pay to the Sublessor the daily rental charges through the date of notification and pay Sublessor the greater of ATSF's depreciated book value or fair market value at the time of casualty, except to the extent such loss or damage is caused directly by the negligence or wilful misconduct of Sublessor or its employees. The parties shall share in salvage of the Locomotive to the extent of their relative payments for the casualty.

8.4 In the event a Locomotive is partly damaged or destroyed, the Sublessee shall elect within 15 days of such occurrence, after consultation with Sublessor, whether to repair the Locomotive or consider it damaged beyond repair. If the Sublessee elects to repair the locomotive, it shall do so (or have the repairs done) at its own expense except to the extent such damage is caused directly by the negligence or wilful misconduct of Sublessor or its

employees. It is understood that the Locomotive so repaired must be restored to good operating condition, reasonable wear and tear excepted. Moreover, during the period such repairs are being made, Sublessee's obligation to pay rent shall continue to the extent damage was not caused directly by the negligence or wilful misconduct of Sublessor or its employees.

- 8.5 Sublessee shall, at all times, at its own expense, cause to be carried and maintained (and shall furnish to Sublessor, upon request therefor, a certificate evidencing) with respect to liabilities assumed by Sublessee under this Sublease (i) all risk insurance on Locomotives and (ii) public liability insurance with respect to third party personal injury and property damage, in such amounts (subject to customary and prudent deductibles) and against such risks and with such insurance companies as is consistent with prudent railroad industry practices; provided, however, that, if Sublessee customarily self-insures against such risks, Sublessee may self-insure to the extent that such self-insurance is consistent with prudent railroad industry practices. Any policies of insurance carried in accordance with the provisions of the

Sublease will name Sublessor as an additional insured, provide that they will not be cancelled or materially altered without thirty days prior written notice to the Sublessor, and will contain such other appropriate provisions as are agreed upon by the parties. A copy of a certificate of insurance naming Sublessor as an additional insured will be provided Sublessor.

9. Indemnity

The Sublessee hereby agrees to indemnify, reimburse, and hold the Sublessor (and any assignee or successor in title of Sublessor) harmless from any and all losses, damages, costs (including attorney's fees), injuries, claims, demands, suits, judgments or causes of action whatsoever (hereinafter referred to as the "Liabilities") arising on account of, or caused in any way by, any of the Locomotives or the use or operation thereof (after acceptance of such Locomotives by Sublessee up to the termination of this Sublease with respect thereto), except to the extent directly caused by the negligence or wilful misconduct of Sublessor or its employees and except as otherwise expressly provided with respect to claims for personal injury, property damage, casualty or other damage to a Locomotive arising under the Resource and Maintenance Agreements between the parties, in which case the

liability provisions of those agreements shall govern.

Sublessee will notify Sublessor promptly of any liability, as defined above, and permit Sublessor to appear in any proceeding to defend its interests as they may be.

10. Liability of Sublessor and Sublessee

In no case, whether liability arises under breach of contract, warranty, tort (including negligence) or otherwise, will each party's liability to the other include any special, incidental, indirect or consequential damages including, but not limited to, loss of revenue or profits, damage to freight, loss of use of any equipment, cost of capital, downtime costs, or claims of Sublessee's customers for such damages.

11. Title, Identification, Recording

11.1 At all times during the continuance of this Sublease title to the Locomotives shall remain in the name of the Trustee subject to the financing arrangements described in Appendix 1 hereto or subject to Sublessor's General and Adjustment Mortgages, and delivery of the Locomotives to Sublessee, its assigns or successors, and Sublessee's possession of the Locomotives, shall constitute a lending or bailment for hire.

- 11.2 No right, title or interest in the Locomotives will vest in Sublessee by reason of this Sublease or by reason of the delivery to or use by Sublessee of the Locomotives, except the right to use the Locomotives in accordance with the terms of this Sublease.
- 11.3 Sublessee will take all actions in connection with matters that arise by, through, or as a result of this Sublease necessary to protect the rights, interest and title of Sublessor and Trustee in the Locomotives, and will take no action inconsistent with that obligation.
- 11.4 Sublessee shall not place any markings on the Locomotives that might be interpreted as a claim of ownership by any person, association or corporation other than Trustee or Sublessor. No markings may be placed on the Locomotives without written consent of Sublessor which consent shall not be unreasonably withheld; but the Locomotives may be lettered with the names or initials or other insignia customarily used by the Sublessee on its equipment of the same or a similar type for convenience of identification of the rights to use and operate the Locomotives under this Sublease.

11.5 Prior to delivery of any Locomotive hereunder, Sublessee, at its own expense and without expense to Sublessor, shall cause this Sublease and any supplements hereto and any assignment and reassignment hereof to be filed with the Interstate Commerce Commission. Sublessee shall deliver to Sublessor one copy of a certificate or other evidence satisfactory to counsel for Sublessor of such filing and the payment of filing fees and taxes, if any, in connection therewith. In addition, Sublessee shall do such other acts in connection with matters that arise by, through, or as a result of this Sublease as may be required by Federal or state law, or reasonably requested by Sublessor, for the proper protection of Sublessor's or Trustee's title and interest in the Locomotives.

12. Assignment

12.1 Sublessee shall not assign, transfer or encumber this Sublease or any interest therein or any right granted hereunder without the prior written consent of Sublessor or Trustee, if applicable, and it is agreed that any such transfer, assignment or encumbrance, whether voluntary, by operation of law,

or otherwise, without such prior written consent, shall be void and shall, at the option of Sublessor, terminate this Sublease.

- 12.2 Sublessor, upon prior written notice to Sublessee, may assign this Sublease and all or any of the rights, benefits and advantages hereunder (including, but not limited to, title to any Locomotive) to any of Sublessor's direct or indirect subsidiaries or affiliates as Sublessor may select in its sole discretion.
- 12.3 Notwithstanding any other provision of this agreement, any transfer, assignment or sublease of this Sublease shall not relieve Sublessee of its obligations under this Sublease (including any obligation to give notice to Sublessor of any such transfer, assignment or sublease), shall be made subject to the consent of the Trustee if other than to a Class I railroad and shall require any transferee, assignee, or sublessee to assume all the obligations of this Sublease and require such sublessee to take no action in connection with the obligations of any outstanding primary financing agreements to which such equipment

is subject, and no action in connection with such sublease or activities arising thereunder, that would permit any encumbrances or liens to arise on such equipment contrary to Sublessor's General Mortgage and Adjustment Mortgage of 1895 and any primary financing agreements to which such Locomotive is subject. Sublessee shall deliver to Sublessor for forwarding to Trustee a copy of any such sublease by Sublessee promptly after its execution with confidential financial terms redacted.

13. Representations and Warranties

13.1 The Sublessor represents and warrants that

it has the right to enter into this Sublease subject to the approval of the Trustee.

13.2 The Sublessee represents and warrants that:

13.2.1 The Sublessee is a duly organized and validly existing corporation in good standing under the laws of the State of New York; is duly qualified to do business in such jurisdictions as are necessary to

carry out the transactions contemplated by this Sublease; and has power and authority to own its properties and carry on its business as now conducted.

13.2.2 The execution and delivery of this Sublease is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and the Sublease is a valid and binding obligation of the Sublessee enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against the Sublessee in accordance with its terms;

13.2.3 The rights of Sublessor as herein set forth and the title of Sublessor to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument binding upon Sublessee;

13.2.4 No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Sublease or for the validity and enforceability thereof or the leasing of the Locomotives hereunder for the rentals and on the other terms and conditions provided for herein; or, if any such authorizations are required, they have been obtained, and if any such shall hereafter be required, they will promptly be obtained;

13.2.5 No litigation or administrative proceedings are pending or to the knowledge of the Sublessee, threatened against the Sublessee, the adverse determination of which would affect the ability of Sublessee to perform its obligations under this Sublease, the validity of this Sublease or the rights of the Sublessor hereunder.

14. Default

14.1 If Sublessee breaches or is in default of any material provision of this Sublease and such breach or default is not cured within fourteen (14)

calendar days after receipt of written notice specifying such breach or default has been given pursuant to the provisions of this Sublease, then Sublessor, at its option, may, without prejudice to any other rights or remedies it may have under this Sublease, at law or in equity, do any one or more of the following, provided, however, that if the default is of such nature as to require more than fourteen (14) days to cure, and such party commences such cure within such fourteen (14) day period and proceeds with due diligence and dispatch to effect such cure, such party will have an additional thirty (30) day period to cure such default before Sublessor exercises the rights below:

- 14.1.1 proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Sublessee of the applicable covenants of this Sublease or to recover damages for the breach thereof;
- 14.1.2 terminate this Sublease immediately, whereupon Sublessee shall return the Locomotives to Sublessor; but the Sublessor shall, nevertheless, have the right to recover from the Sublessee any and all

amounts which under the terms of this Sublease may then be due and owing or which may become due and unpaid for the use of the Locomotives (including, but not limited to, rentals accruing on the Locomotives after the date of termination).

- 14.2 The remedies and powers in this Sublease provided in favor of Sublessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies and powers in its favor existing at law or in equity and each and every remedy and power may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by Sublessor. Sublessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Sublessor in the exercise of any remedy or power, no granting of an extension of time for the making of any payment due hereunder or other indulgence and no exercise of any remedy or power shall impair any such remedy or power or the rights under this Sublease or shall constitute a waiver of any breach or default or an acquiescence therein.

In the event that Sublessor shall bring suit and be entitled to judgment hereunder, then Sublessor shall be entitled to recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

14.3 As used in this Section 14, a breach or default of a material provision of this Sublease shall include, but not be limited to, the following:

14.3.1 failure to pay any amounts hereunder when due;

14.3.2 Sublessee's making or suffering, voluntarily, by operation of law or otherwise, any unauthorized assignment, encumbrance or transfer of this Sublease or any interest thereon or any right granted thereunder, and shall fail or refuse to cause such assignment, encumbrance or transfer to be cancelled by agreement of all parties having any interest therein.

14.3.3 any proceedings shall be commenced by or against Sublessee for any relief under any bankruptcy or insolvency laws, or laws

relating to the relief of debtors,
readjustments of indebtedness,
reorganizations, arrangements, compositions
or extensions.

14.3.4 failure to satisfy the insurance
requirements under paragraph 8.5.

14.4 Sublessee shall be entitled to quiet enjoyment of
the Locomotives during the term of this Sublease,
and in the event such quiet enjoyment is materially
disturbed as a result of action by, through, or as a
result of actions of Sublessor, such breach shall be
considered an event of default by Sublessor, in
which case Sublessee shall have the right to
terminate this Sublease with respect to any affected
Locomotive, and return such Locomotive to
Sublessor. Upon such return, Sublessee shall have
no further obligation with respect to such
Locomotive other than those already arising under
the Sublease prior to termination. Such return
shall not preclude exercise of any remedy otherwise
available to Sublessee for the results of
Sublessor's default.

15. Term

15.1 The term of this Sublease shall commence upon the acceptance of the Locomotives described in Appendix 1 and shall terminate with respect to each Locomotive, five years from the date of acceptance of that Locomotive, unless sooner terminated by the mutual consent of both parties hereto, or for default or event of loss as described in Sections 14 and 8, respectively. With respect to the 16 B-36-7 Locomotives described in Schedule 1 of Appendix 1, Sublessee may elect to extend the lease through November 1, 1995 (Extended Sublease Term) upon written notice not more than 120 and less than 60 days prior to the expiration of the initial five year term. Provided, however, notwithstanding any other provision of this Sublease, (a) in the event the Purchase Agreement, the Resource Agreement, the Remarketing Agreement, the Materials Agreement or the Maintenance Agreement are terminated as a result of a material default or breach of any of their terms, the nonbreaching or nondefaulting party shall have the right to terminate this Sublease agreement upon written notice to the other, upon which the Locomotives shall be returned to Sublessor; or (b) in the event the Purchase Agreement is terminated

for any reason whatsoever, including but not limited to failure of Sublessor to take delivery of or pay for the Locomotives which are the subject of said Purchase Agreement (whether such failure is excused or unexcused), Sublessee shall have the right to terminate this Sublease upon written notice to Sublessor, upon which the Locomotives shall be returned to Sublessor.

- 15.2 It is understood and agreed that any termination will not relieve either party of any obligation arising prior to or upon such termination, including but not limited to the obligations of Sublessee under Sections 8, 9 and 11, and any obligation to pay any rent or other sums due and owing to Sublessor at the time of any such termination or as a result of any such termination.

Upon the termination of this Agreement with respect to each Locomotive, and provided Sublessee does not exercise its purchase option under Section 15.3, such Locomotive shall be returned to Sublessor within 30 days unless otherwise agreed, during which time the rentals and all other obligations under this Agreement shall remain in effect until acceptance by Sublessor at Argentine Yard in good

repair and operating condition, normal wear and tear excepted, shall be painted in Sublessor's colors with Sublessor's markings or, if such Locomotive is returned without such color scheme and markings, Sublessee shall reimburse Sublessor for its cost to repaint and remark such Locomotive, and shall contain full complement of consumables (fuel, sand, lube oil, borate water, air compressor oil).

15.3 Purchase Option

Provided that this Sublease has not been earlier terminated and the Sublessor is not in default hereunder, the Sublessee may purchase the Locomotives as provided herein, further provided that such acquisition occurs on or after the termination of the financing arrangements described in Appendix 1, and subject to the requirements of Sublessor's General and Adjustment Mortgages of 1895.

- a) With respect to the 54 C-30-7 Locomotives shown in Schedule 2 of Appendix 1, Sublessee shall have the right of first refusal to purchase the said Locomotives at Fair Market Value for a period of ninety days (90) from the expiration of the term of this Sublease.

- b) With respect to the 16 B-36-7 Locomotives shown in Schedule 1 of Appendix 1, Sublessee may elect, by written notice delivered to the Sublessor not more than 120 and not less than 75 days prior to the end of the Extended Sublease Term, to acquire all, but not less than all, of the existing said units at the greater of Fair Market Value or \$75,000 per unit. Such option will be exercisable November 1, 1995 at the termination of the primary financing agreements for such Locomotives. In consideration for the additions and improvements Sublessee will make to the units, Sublessee and Sublessor agree that if Sublessee exercises its option to purchase the Locomotives, Sublessor, as consideration for such improvements, will pay Sublessee a price equal to one half (1/2) of the Fair Market Value. Except if the Fair Market Value is determined to be less than, or equal to \$150,000 per unit, Sublessor's payment for such improvements shall be the difference between the Fair Market Value and \$75,000. Should Sublessee exercise its option to acquire said units, Sublessor shall have the right to purchase Sublessee's option at a price equal to

one half (1/2) the Fair Market Value. Except that if the Fair Market Value is determined to be less than or equal to \$150,000 such payment shall be the difference between the Fair Market Value and \$75,000 per unit. In the event Sublessee does not exercise its option to acquire the units, said Locomotives shall be returned at no cost to Sublessor in accordance with Section 15.2.

Fair Market Value shall be determined on the basis of the value which would be obtained in an arm's length transaction between an informed and willing purchaser and an informed and willing seller under no compulsion to sell. If the Sublessor and Sublessee are unable to agree upon a determination of the Fair Market Value of the Locomotives, such Fair Market Value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser as hereinafter defined. The term "Appraiser" shall mean such independent Appraiser as the Sublessor may select with the approval of the Sublessee, or, failing such approved selection, a panel of three independent Appraisers, one of whom shall be

selected by the Sublessor, the second by the Sublessee, and the third designated by the first two so selected. The Appraiser(s) shall be instructed to make the determination of Fair Market Value within a period of 30 days following appointment and shall promptly communicate such determination in writing to the Sublessor and Sublessee. Within 10 days following receipt of such communication Sublessee must notify Sublessor in writing that it accepts or rejects such determination. If Sublessee rejects such determination, then there shall be no purchase and the term of this Sublease shall expire at the end of the applicable term. If Sublessee accepts said determination, Sublessor shall have 10 days from receipt of Sublessee's written acceptance to exercise its option to purchase Sublessee's right to purchase said locomotives. The determination of Fair Market Value described above shall be conclusive in determining the amount Sublessor shall pay Sublessee. Otherwise, the purchase shall be effected on the last day of the applicable term of this Sublease at the Fair Market Value so determined by the appraisal procedure. All expenses for

the appraisal process shall be borne equally between Sublessor and Sublessee.

- c) Sublessor shall furnish Sublessee clear and marketable title to any units transferred under this Section 15.3.

16. General

16.1 Subject Headings

The subject headings on this Sublease have been placed thereon for the mere convenience of the parties and shall not be considered in any question of interpretation or construction of this Sublease.

16.2 Waiver

The failure of either party to enforce at any time or for any period of time any provision of this Sublease shall not be construed as a waiver of such provision or of the rights of such party thereafter to enforce such provision.

16.3 Notice

All notices required or permitted hereunder shall be in writing and shall be deemed duly given when personally delivered or transmitted by first class mail letter, telex, or telephone transmitted facsimile, directed by one party to the other party at its respective address as follows:

To Sublessee: General Electric Company
 2901 East Lake Road
 Erie, PA 16531

ATTN: General Manager-
Customer Service
and Support

To Sublessor: The Atchison, Topeka and
 Santa Fe Railway Company
 80 East Jackson Boulevard
 Chicago, Illinois 60604

ATTN: Vice President and
Chief Financial
Officer

or to such other address as either party may hereafter designate in writing by like notice.

16.4 Execution in Counterparts

This Sublease may be executed simultaneously in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

16.5 Applicable Law

Except insofar as Federal law may be applicable, the terms and conditions of this instrument and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, but Sublessor and any assignee thereof shall be entitled to such additional rights arising out of the filing or recording hereof, or of any assignment hereof, as shall be conferred by the laws of any jurisdiction in which the Sublease or any such assignment shall be filed or recorded.

16.6 Entire Agreement

Except as otherwise specified herein, this Sublease contains the entire and only agreement between the parties concerning the subject matter hereof, and there are merged herein all prior and collateral representations, promises or conditions in connection with the subject matter hereof, and any representation, promise or condition not incorporated herein and made a part hereof shall not be binding upon either party. No modification, renewal, extension, termination or waiver of this Sublease or any of the provisions herein contained shall be binding upon either party unless made in writing by a duly authorized representative of each party.

WHEREFORE, the parties hereto, intending to be legally bound hereby, have executed this Sublease as of the date first written above.

GENERAL ELECTRIC COMPANY

By: Michael D. Gessbrant

Title: Vice President

Date: 9/14/89

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY


By: P. R. Haverly

Title: President

Date: 9/14/89

STATE OF KANSAS)
 : SS.:
COUNTY OF WYANDOTTE)

On this 14th day of September, 1989, before me personally appeared Michael D. Lockhart, to me personally known, who being by me duly sworn, says that he is the Vice President-Transportation Systems Business Operations of General Electric Company, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


ROBERT T. FRANKLIN
NOTARY PUBLIC
STATE OF KANSAS
My App't. Exp. 18 - FEB - 91
Notary Public

(Notarial Seal)

My Commission expires

STATE OF KANSAS)
 : ss.:
COUNTY OF WYANDOTTE)

On this 14th day of September, 1989, before me personally appeared Michael R. Haverty, to me personally known, who being by me duly sworn, says that he is the President of The Atchison, Topeka and Santa Fe Railway Company, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


ROBERT T. FRANKLIN

NOTARY PUBLIC
STATE OF KANSAS

My App't Exp 18 FEB 91

Notary Public

(Notarial Seal)

My Commission expires

CONSENT

The undersigned, the Trustee ("Trustee") named in the foregoing Sublease Agreement between The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") and General Electric Company ("GE") hereby (a) acknowledges receipt of a copy of the Sublease Agreement, and (b) consents to all terms and conditions of the Sublease Agreement, and (c) grants its consent to any assignment or sublease by GE of the Locomotives subleased in the Sublease Agreement to Class I railroads or to parties other than a Class I railroad so long as such assignment or sublease is fully subject to any Equipment Trust Agreements of which Harris Trust and Savings Bank is Trustee then in effect and to the terms of the Sublease Agreement, and GE remains fully responsible for all its obligations under the Sublease Agreement.

HARRIS TRUST AND SAVINGS BANK

By: _____

RS masm

Title: _____

VICE PRESIDENT

APPENDIX 1

Identification of Locomotives

Schedule 1

All of the following in this Schedule 1 are General Electric B36-7, 3600 horsepower, four axle, four motor road freight diesel electric locomotives:

<u>Road No</u>	<u>AAR Mechanical Designation</u>	<u>Identifying Marks</u>	<u>Equipment Trust Agreement</u>
7484	B-B	"Santa Fe" marked in yellow	Series Q, Maturing November 1, 1995 (ICC Recordation Number 12287)
7485	"	"	"
7486	"	"	"
7487	"	"	"
7488	"	"	"
7489	"	"	"
7490	"	"	"
7491	"	"	"
7492	"	"	"
7493	"	"	"
7494	"	"	"
7495	"	"	"
7496	"	"	"
7497	"	"	"
7498	"	"	"
7499	"	"	"

The above locomotives shall be delivered upon execution of the Sublease Agreement.

Schedule 2

All of the following in this Schedule 2 are General Electric C30-7, 3000 horsepower, six axle, six motor road freight diesel electric locomotives.

<u>Road No.</u>	<u>AAR Mechanical Designation</u>	<u>Identifying Marks</u>	<u>Equipment Trust Agreement</u>
8015	C-C	"Santa Fe" marked in yellow	Series M, Maturing October 1, 1992 (ICC Recordation Number 9017)
8017	"	"	"
8021	"	"	"
8023	"	"	"
8025	"	"	"
8026	"	"	"
8032	"	"	"
8035	"	"	"
8044	"	"	"
8046	"	"	"
8050	"	"	"
8053	"	"	"
8056	"	"	"
8058	"	"	"

APPENDIX 1

Schedule 2
(Continued)

Road No.	AAR Mechanical Designation	Identifying Marks	Equipment Trust Agreement
8066	C-C	"Santa Fe" marked in yellow	Series O, Maturing March 1, 1994 (ICC Recordation Number 10224)
8072	"	"	"
8075	"	"	"
8077	"	"	"
8078	"	"	"
8079	"	"	"
8084	"	"	"
8087	"	"	"
8093	"	"	"
8095	"	"	"
8096	"	"	"
8123	"	"	Series R, Maturing May 15, 1996 (ICC Recordation Number 13067)
8124	"	"	"
8125	"	"	"
8126	"	"	"
8127	"	"	"
8128	"	"	"
8129	"	"	"
8130	"	"	"
8131	"	"	"
8132	"	"	"
8133	"	"	"
8134	"	"	"
8135	"	"	"
8136	"	"	"
8137	"	"	"
8138	"	"	"
8139	"	"	"
8140	"	"	"
8141	"	"	"
8142	"	"	"
8143	"	"	"
8144	"	"	"
8145	"	"	"
8146	"	"	"
8147	"	"	"
8148	"	"	"
8149	"	"	"
8151	"	"	"
8152	"	"	"

The above locomotives in Schedule 2 are to be delivered on or before December 31, 1989.

CERTIFICATE OF ACCEPTANCE

I, the duly authorized representative for the General Electric Company (the "Sublessee") under the Locomotive Sublease Agreement of Locomotive Equipment dated as of September ____, 1989, do certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF LOCOMOTIVE:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED:

ROAD NUMBER(S):

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications, requirements and standards applicable therefore as provided in the Sublease.

Authorized Representative of Sublessee

**TRANSPORTATION AND STORAGE SERVICES ANCILLARY
TO SUBLEASE AGREEMENT**

I. Transportation Services

A. Initial Delivery

1. GE will take initial delivery of the 70 units from SF at the Argentine, Kansas, facility only.
2. SF will provide necessary transportation services for the 70 units based on the following schedule:
 - a. If the unit is in operating condition and can be worked in a train to the interchange point designated by GE, no transportation charge will be assessed to GE.
 - b. If the unit is in operating condition and can be worked in a train from Argentine only to one of the three (3) SF designated marshalling points (Barstow, CA; Temple, TX; Argentine, KS) and cannot be worked from that marshalling point to the designated interchange point, GE will not be assessed a transportation charge for the mileage from Argentine to one of the other two (2) designated points; however, any mileage from the marshalling point to the designated interchange point where the unit cannot be readily worked in a train, GE will be assessed a charge of \$0.40 per mile for such services.
 - c. If the unit is not in operating condition, GE will be assessed a transportation charge of \$0.40 per mile from Argentine to the designated interchange point.
 - d. If the unit is in operating condition but cannot be worked in a train by SF within the time frame desired by GE, GE will be assessed a transportation charge of \$0.40 per mile from Argentine to the designated interchange point.

B. Transportation services provided during term of contract other than initial delivery.

1. If GE elects to store any of the 70 subleased units at Argentine, Kansas, during the term of this contract, any transportation incurred to those units on SF lines to or from the designated storage point (Argentine, KS), the following transportation charges will be assessed:

- a. If the unit is in operating condition and can be worked in a train from Argentine to the designated interchange point or from the designated interchange point to Argentine, GE will not be assessed a transportation charge.
- b. If the unit is in operating condition and can be worked to/from Argentine only to or from one of the two (2) other designated marshalling points (Barstow, CA; Temple, TX;) and cannot be worked to/from that marshalling point to/from the designated interchange point, GE will not be assessed a transportation charge for the mileage to/from the marshalling point to or from Argentine, Kansas; however, if the unit cannot be readily worked to/from the marshalling point to/from the designated interchange point, GE will be assessed a transportation charge of \$0.40 per mile for that portion.
- c. If the unit is not in operating condition, GE will be assessed a transportation charge of \$0.40 per mile to/from Argentine to/from the designated interchange point.
- d. If the unit is in operating condition but cannot be worked in a train by SF within the time frame desired by GE, GE will be assessed a transportation charge of \$0.40 per mile to/from Argentine to/from the designated interchange point.

II. Switching Services

Following initial turnover of the 70 subject units to GE, GE will be assessed a fee of \$50 per switch required. "Switch" is defined as placing a unit "into" or "out of" storage, regardless of the number of individual moves which may be required to place that unit "into" or "out of" storage.

III. Storage Services

Should GE elect to store any or all of the 70 units on SF, the following parameters will apply:

- A. All units will be stored within the yard limits of Argentine, Kansas, yard.
- B. Any unit in storage will be assessed a storage charge of \$1.00 per calendar day.

- C. SF will not assume liability for any damage due to vandalism, acts of God, etc., incurred to units while in storage except to the extent directly resulting from the negligence or wilful misconduct of Santa Fe or its employees.

IV. Locomotive Servicing

A. Initial Delivery

- 1. Upon initial receipt, SF will deliver all 70 units with full complements of consumables (fuel, sand, lube oil, borate water, air compressor oil).

B. All Other Servicing

- 1. SF will provide locomotive servicing (fuel, sand, borate water, lube oil and other consumables) to the 70 units at GE's request. GE will reimburse SF for all material and labor incurred.
- 2. If SF is able to work the unit in a train, GE will be charged for only that portion of the fuel remaining.

V. Escalation

All charges for services will be adjusted annually as provided by Annex 7 of the "Maintenance Agreement".